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U.S. DISTRICT COURT
WESTERN DISTRICT OF NC

PAGE, STEPHEN CONVICT 75788-198

Mr. Stephen M. Page

75788-198

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OPEN ONLY IN THE
PRESENCE OF THE INMATE

DECEMBER 28, 2008

MR. Stephen M. Page 75788-198

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF NORTH CAROLINA

Stephen M. Page, CASE No. 5:00-CR-15-03-V

DEFENDANT/PETITIONER,

VERSUS

UNITED STATES OF AMERICA,

RESPONDANT.

SUPPLEMENTAL MOTION/PETITION FOR
MODIFICATION AND REDUCTION OF SENTENCE

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NOW COMES THE MOVANT/PETITIONER
PURSUANT TO TITLE 18 U.S.C.A. § 3582
ET SEQ, AND TITLE 18 U.S.C.A. § 3742 ET
SEQ, THE DUE PROCESS CLAUSE OF THE
FIFTH AMENDMENT OF THE UNITED
STATES CONSTITUTION; TO MODIFY
A CRIMINAL SENTENCE OR REDUCE
A CRIMINAL SENTENCE, THAT THE
HONORABLE COURT INVOKE A
REVIEW AND/OR EVIDENTIARY
HEARING CONSISTANT WITH THIS
PETITIONERS CLAIMS, AVERED FACTS,
DECLARATIONS, AND SUPPLEMENTAL APP-
PLICATION FOR JUDICIAL REVIEW.

MOVANT/PETITIONER, FURTHER
REFERENCES AN OBJECTION AS GROUND
OF BASIS FOR A REVIEW AND INVOCATION
OF THE DUE PROCESS CLAUSE OF THE
FIFTH AMENDMENT OF THE U.S.C.A.
(CONSTITUTION). AND THERE TO MOVES
THE HONORABLE FOR AN EVIDENTIARY

HEARING IN ORDER TO DETERMINE IF
PLAIN ERROR RESULTED IN THE U.S.
DISTRICT COURT'S RELIANCE OF
MISREPRESENTED FACTS IN REGARDS
OF THE CRIMINAL HISTORY DATA
USED BY THE U.S. PROBATION
REPORT OR PRESENTENCE REPORT
THAT WAS INCORRECT AND OVERLY
MISREPRESENTED TO SUCH A DEGREE
AS TO HAVE CAUSED MANIFEST IN-
JUSTICE OR MISCARRIAGE OF THE
JUSTICE. AND WAS RELIED (SIC)
UPON AT SENTENCE(ING). AND
THAT SUCH RELIANCE ULTIMATELY
CAUSED DEFENDANT/PETITIONER
TO BE ASSESSED IN A SENTENCE
GUIDELINE CATEGORY TOTALLY
INAPPROPRIATE AND COMPLETELY
WITHIN IMPROPER AND INCORRECT
GUIDELINES. MOREOVER RESULTED
IN THE IMPOSITION OF A UNCONST-

stitutional sentence which was
vicariously imposed as if
said guidelines were mandatory.

The District Court treated the
guidelines -
as mandatory, See: United States
V. Booker, 543 U.S. 220, 125 S.Ct.
738, 160 L.Ed.2d 621 (2005); United
States V. Antonakopoulos, 399 -
F.3d 68, 78-79 (1st Cir. 2005).

See Also: United States V.
Miller, 891 F.2d 1265 (7th Cir. 1989);
Kinsella V. United States ex rel.
Singleton, 361 U.S. 234, 246, 80
S.Ct. 297, 303-04, 4 L.Ed.2d 268
(1960); United States V. Turner,
501 F.3d 59 (1st Cir. 2007).

I. DISCUSSION

Legal impossibility of having
had to be engaged in the offenses
the United States invoked by

JUDICIAL PROCESS AGAINST THE PETITIONER AS A DEFENDANT IN A CRIMINAL ACTION TO WHICH THE DEFENDANT/PETITIONER AGREED TO ENTER A PLEA OF GUILT, HOWEVER, IT WAS LEGALLY IMPOSSIBLE FOR A DISABLED DEFENDANT/PETITIONER SUFFERING A BRAIN INJURY TO HAVE COMMITTED THE OFFENSES, AWARELY AS AN OFFENDER AGAINST THE UNITED STATES. SEE SUPPLEMENTAL MOTION/PETITION APPENDIX VOLUME I EXHIBIT "A" 'RECENT CORRESPONDANCE TO APPOINTED ATTORNEY AT LAW LISA S. COSTNER FROM PETITIONER'.

II. ANALYTICAL FRAMEWORK

"The Remedy of a New Trial is RARELY USED; IT IS WARRANTED 'ONLY WHERE THERE WOULD BE A MISCARriage OF JUSTICE' OR 'WHERE THE EVIDENCE

preponderates heavily against the verdict." QUOTING UNITED STATES V. MERLINO, 204 F. Supp.2d 83 (D. MASS. 2002); [at 86]. ... In acting on a motion for judgement of acquittal, "the trial judge must resolve all evidentiary conflicts and ... in the prosecution's favor; and, moreover, as among competing inferences, two or more of which are plausible, the judge must choose the inference that best fits the prosecution's theory of guilt." UNITED STATES V. OLBRES, 61 F.3d 967, 970 (1st Cir. 1995). "(UNITED STATES V. MERLINO, SUPRA)". See ALSO; UNITED STATES V. ANDRADE, 94 F.3d 9, 14 (1st Cir. 1996). DEFENDANT/PETITIONER ASSERTS that the Federal Rules of CRIMINAL PROCEDURE do NOT preclude further proceedings. Though this is NOT A Fed. R. Crim. P. Rule 29 OR 33 MOTION.

A Guilty plea should be set aside only for errors that implicate the core concerns of the Rule governing the Acceptance of pleas, which includes the defendant's knowledge of the consequences of the Guilty plea. UNITED STATES V. SANTO, 225 F.3d 92 (1st Cir. 2000). Fed. R. CR. PROC. Rule 11 (c) (1) OR 11 et seq Allows the withdrawal of a plea if substantial rights are affected by an error to the Rule governing plea hearings. AND that Rule requires a court to advise defendant of minimum and maximum penalties at plea hearing.

III. SUMMARY OF ARGUMENT

The ERRONEOUS Position starts with a Failure of Counsel to Notice AND Recognize A Case of Legal IM-

possibility AND SAID DEFENSE therewith.

AND CONTINUES WHEN A COURT THAT RECOGNIZED A DISPARITY BETWEEN CRACK COCAINE AND POWDER COCAINE SENTENCES, CONVEYS HIGHER PENALTIES, EVEN AFTER CASES SUCH AS; UNITED STATES V. BUCKNER, 894 F.2d 975, 978-80 (8th Cir. 1990), OR UNITED STATES V. ANDRADE, 94 F.3d 9 (1st Cir. 1996).

IS A MANIFEST INJUSTICE BECAUSE THE RULE OF LENITY SHOULD OF BEEN INVOKED ON THE VAGUE AND AMBIGUOUS UNCERTAINTY OF THE CRIMINAL STATUTE, MANY YEARS PRECEDING ANY IMPOSITION OF A SENTENCE IMPOSED UPON THIS PETITIONER FOR WHICH IT WAS LEGALLY IMPOSSIBLE FOR PETITIONER TO HAVE COMMITTED ANY OFFENSE THAT PRESENTLY BINDS IMPOSITION OF A TERM OF 292 MONTHS BASED ON

Levels Founded upon erroneous construction of misrepresented Criminal History Record Data and Facts, As well As Application of Unconstitutional Base Offense Levels considered mandatory and for which as well are found to be excessive.

IV. ARGUMENT

The distinction between crack and powder cocaine... to be constitutional. UNITED STATES V. SINGLETERBY, 29 F.3d 733, 739-41 (1st Cir.), cert. denied, — U.S. —, 115 S.Ct. 647, 130 L.Ed. 2d 552 (1994). QUOTING, UNITED STATES V. ANDRADE, 94 F.3d at 15 (1st Cir. 1996).

But, at the same token: the recent Report of the Sentencing Commission, which recommended a modification of this disparity, demonstrates that there are

factors not adequately considered by the current guidelines. UNITED STATES V. ANDRADE, 94 F.3d at 9 (1st Cir. 1996).

V CONCLUSION

The Plea DID NOT CONSIST OF FACTORS OR demonstrated Ambiguous CRIMINAL STATUTES⁹² to be construed in favor of the (defendant)... applied both to the scope of conduct covered by a criminal statute AND to the extent of the penalties imposed. See e.g., Bifulco V. UNITED STATES, 447 U.S. 381, 387, 100 S.Ct. 2247, 2252, 65 L.Ed.2d 205 (1980).⁹³ QUOTING, UNITED STATES V. EDMONDS, 80 F.3d 810 (3d Cir. 1996) AND THEREFORE WAS NOT VOLUNTARY AND NOR WAS it KNOWINGLY.

FOR ALL of the Above AND the ATTACHED OR APPENDED, PETITIONER

II

WARRANTED A WITHDRAWAL OF PLEA AND
IS ENTITLED TO FURTHER REVIEW
AND FACTUAL FINDINGS NOT INCONSISTANT
WITH AMENDMENTS OF THE U.S.S.G.

December 28, 2008

Respectfully Submitted
Mr. Stephen M. Page

CERTIFICATE OF SERVICE

I, Stephen Page, declare and state pursuant to Title
28 U.S.C. § 1746 that I placed in the U.S. Mail post-
age prepaid first class mail an original and 2 true &
correct copies, 1 true & correct copy, 1 true & correct copy of
Supplemental Motion/Petition For Modification AND Re-
duction of Sentence with Certificate of Service
AND Appendix of Exhibits properly sealed AND

Addressed to:

Clerk USDC	{ US Attorney	{ Attorney At Law
401 W. Trade St.	{ % Clerk USDC	{ Lisa Costner
Charlotte, NC 28202	{ 401 W. Trade St.	{ 200 Brookstone Ave
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		{ 27101
AN ORIGINAL & 2 Copies	{ 1 copy	{ 1 copy

MAILED: 3-04-09

February 20, 2009

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